

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Mark Wasvary, individually and as  
the representative of a class of  
similarly-situated persons,

Plaintiff,

v.

Case No. 15-10750

WB Holdings, LLC, *et al.*,

Sean F. Cox

United States District Court Judge

Defendants.

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**ORDER LIFTING STAY**  
**AND VACATING PRIOR RULING**

On March 2, 2015, Plaintiff filed this putative class action, asserting claims against Defendants under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“the TCPA”).

In an Opinion & Order issued on September 2, 2015, this Court granted in part the Defendants’ Motion to Dismiss, to the extent that the Court ruled that it would enter judgment in Plaintiff’s favor, over Plaintiff’s objection, in accordance with Defendants’ unaccepted Rule 68 Offer of Judgment, thereby rendering this case moot under then-existing Sixth Circuit precedent. (Docket Entry No. 32).

Soon after, and before any judgment was issued by this Court, Plaintiff filed a Motion for Reconsideration (Docket Entry No. 33) and then a Motion asking the Court to stay proceedings in this case until the United States Supreme Court rules in a case addressing the mootness-by-unaccepted-offer-of-judgment theory. (Docket Entry Nos. 34 & 35).

In an Order issued on October 22, 2015, this Court ordered that all proceedings in this

case shall be stayed until the United States Supreme Court issues its decision reviewing *Gomez v. Campbell-Ewald Co.*, 768 F.3d 871 (9th Cir. 2014) *cert. granted*, 135 S.Ct. 2311, 191 L. Ed. 2d 977 (2015). (Docket Entry No. 36).

The Supreme Court issued its decision in *Campbell-Ewald v. Gomez* on January 20, 2016, ruling that an unaccepted offer of judgment does not moot a plaintiff's case. *Campbell-Ewald v. Gomez*, 577 U.S. \_\_ (2016). In light of that decision, the Court ordered the parties to show cause, in writing, why this Court should not: 1) lift the stay in this case; 2) vacate its prior ruling with respect to Defendants' unaccepted offer of judgment; and 3) set a Scheduling Conference in this case.

The parties have since filed responses to this Court's show cause order. Having considered the parties' respective positions, the Court hereby **ORDERS** that the stay in this action is **LIFTED**. The Court further **VACATES** its prior ruling that "under *O'Brien*, this Court will enter judgment in [Plaintiff's] favor, in accordance with the monetary damages, injunctive relief, and attorney fees/costs provisions of the Rule 68 offer of judgment and dismiss this case as moot." See *Campbell-Ewald v. Gomez, supra*; *Family Health Chiropractic, Inc. v. MD On-Line Solutions, Inc.*, 2016 WL 384823 (6th Cir. Fed. 2, 2016). As such, the Court shall issue a scheduling order in this action, so that the action can resume.

**IT IS SO ORDERED.**

S/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: March 21, 2016

I hereby certify that a copy of the foregoing document was served upon counsel of record on March 21, 2016, by electronic and/or ordinary mail.

S/Jennifer McCoy

Case Manager